IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9496 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHJI GALBAJI THAKORE

Versus

COMMISSIONER OF POLICE

Appearance:

MR AM PAREKH for Petitioner

Mr.Uday Bhatt AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 02/12/2000

ORAL JUDGEMENT

#. The detention order under the provisions of Gujarat Prevention of Anti Social Activities Act (PASA Act for short) came to be passed by the Police Commissioner, Ahmedabad City on 24.7..2000 in exercise of the powers conferred upon him by section 3(1) of the PASA Act

against the petitioner and the same is challenged by the petitioner in this petition under Article 226 of the Constitution of India.

#. The grounds of detention as placed on record denote that in all 8 crimes were registered against the petitioner from 24.2.1999 to 20.7.2000 under section 66(b), 65(e) and 81 of the Bombay Prohibition Act wherein country liquor was seized from the petitioner. The detaining authority considered the investigation in the above said crimes and the papers of the above said cases. The detaining authority also considered the statements of two witness who on assurance of anonymity offered the statements regarding the incidents took place on 13.7.2000 and 2.7.2000. From the above material the detaining authority reached to the conclusion that the petitioner was an obstruction to public order and public peace. The illegal activities of the petitioner was harmful to the public health. The detaining authority therefore came to the conclusion that the petitioner was a bootlegger within the meaning of section 2(b) of the PASA Act.

#. The detaining authority also considered that to prevent the illegal activities of the petitioner forthwith it was necessary that he be detained under the PASA Act.

#. Learned advocate Mr.A.M.Parekh for the petitioner and Mr. Uday Bhatt AGP for the respondents were heard.

#. From the rival contentions and the grounds of challenge against the order, it emerges that the petitioner has vehemently urged that the order of detention is vitiated because of non application of mind by the detaining authority inasmuch as the detaining authority failed to take into consideration the less drastic remedy available to the detaining authority.

#. In Zubedabibi Rasidkhan Pathan vs.State ofGujarat reported in 1995 (2) GLR 1134 the Division Bench of this Court ruled that the detaining authority was required to consider less drastic remedy like cancellation of bail available under the provisions of section 437(5) Cr.P.C. The Court observed that the provisions under section 437(5) Cr.P.C. are more wide in import and intent. In that case the detention order came to be quashed because of non application of mind by the detaining authority in not considering the less drastic remedy available to him. This view was fortified by the decision of the Division Bench of this court in LPA No. 1056 of 1999 in the case

of Yunusbhai Hasanbhai Ghanchi vs.District Magistrate decided on 15.9.1999.

#. Reverting to the facts of this case and the grounds, the detaining authority observed that out of the 8 crimes registered against the petitioner, the petitioner was on bail in 6 cases while in other two remaining cases the petitioner was in judicial custody. The detaining authority further observed that in the cases in which the petitioner was in judicial custody was likely to be released on bail he was likely to continue his illegal activities. The detaining authority further observed that if provisions for cancellation of bail were contemplated , the same was likely to consume more time . Thus according to the detaining authority there was no other alternative except to pass the order under the PASA Act.

#. The subjective satisfaction arrived at by the detaining authority is vitiated on two grounds; firstly since the petitioner was in judicial custody in the two crimes registered against the petitioner, there was hardly any possibility to continue his illegal and anti social activities as alleged.

#. The purpose of detention is to detain a bootlegger to prevent him from indulging in illegal activity. In this case, on the date of serving the detention order, the petitioner was in judicial custody and the question to continue his illegal activity did not arise. The subjective satisfaction is therefore,vitiated on this ground.

##. Secondly the order of detention is vitiated on the ground that the detaining authority wrongly considered the less drastic remedy available without resorting to the procedure for cancellation of bail. The detaining authority simply brushed aside this aspect by merely saying that the procedure for cancellation of bail was likely to consume more time. The non application of mind by the detaining authority clearly emerges in this respect also. Therefore, on this ground also the order of detention is required to be quashed and set aside.

##. In view of the above discussion the detention order dated 24.7.2000 passed by the Police Commissioner, Ahmedabad City against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. The petitioner-Rameshji Galbaji Thakore is ordered to be set at liberty forthwith if he is not required to be detained

for any other purpose. Rule is made absolute. Direct service.

(J.R.Vora.J)

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